Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CHANKERAN MANGRA,

Petitioner

v.

U. S. ATTORNEY GENERAL

Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeal for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Eleventh Circuit Court of Appeal erred in its application of the Substantial Evidence Standard and in so doing erred in upholding the decisions denying political asylum and withholding of removal under the statute and the Convention Against Torture where Petitioner has a well founded fear of persecution by the PNC based upon her race and political opinion.

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Chankeran Mangra, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeal for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeal, Mangra v. U.S. Attorney General, 153 Fed. Appx. 615, (11th Cir. 2005) (App. 20a) is not published. The Opinion of the Board of Immigration Appeals (App. 19a) is not reported. The Opinion of the Immigration Judge (App. 11a) is not reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was issued on October 28, 2005. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Section 208(a) of the Immigration and Nationality Act: (App. 1a)
Section 212(a)(6)(C)(i) of the Immigration and Nationality Act: (App. 2a)
Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act: (App. 3a)
Section 241(b)(3) of the Immigration and Nationality Act: (App. 3a)

8 C.F.R. § 208.13(b)(1)(i) (2000) (App. 4a)

8 C.F.R. 208.16(c)(2) (App.6a)

8 U.S.C. § 1231 (b)(3) (Supp. II 1996) (App. 6a)

STATEMENT OF THE CASE

On April 29, 2003, the Appellant appeared for a Master Calendar Hearing before the Immigration Judge and filed an application for political asylum and withholding of removal under the statute and the United Nations Convention Against Torture. The IJ accepted her application and scheduled an Individual hearing for September 19, 2003. The Immigration Court then subsequently re-set the Individual Hearing for October 8, 2003. At the Individual Hearing on October 8, 2003, the Immigration Judge denied Appellant's applications for political asylum and withholding of removal under the statute and the United Nations Convention Against Torture.

Appellant then appealed the Immigration Judge's decision to the BIA. On March 28, 2005, the BIA affirmed the Immigration Judge's decision, without opinion. Appellant then filed a petition for review of the BIA's decision. On October 28, 2005, the Court denied her Petition for Review.

REASON FOR GRANTING THE WRIT

The Decision below conflicts with the Substantial Evidence Standard

The Substantial Evidence Standard

The Court of Appeals reviews decisions made by the Board but normally does not consider the rulings and findings of immigration judges unless they impact the Board's decision. Since the Board affirmed the immigration judge's findings and conclusion without opinion, the Court of Appeals for the Eleventh Circuit reviewed the immigration judge's findings here. Efe v. Ashcroft, 293 F.3d

899, 908 (5th Cir. 2002). The Board's factual conclusions are reviewed for substantial evidence. Questions of law are reviewed de novo. The Court of Appeals gives great deference to an immigration judge's decisions concerning an alien's credibility. Efe v. Ashcroft, 293 F.3d at 909.

Establishing Eligibility for Political Asylum

To establish eligibility for asylum, an applicant must prove that he or she is a refugee. Kataria v. INS, 232 F.3d 1107, 1119 (9th Cir. 2000), Citing Cordon-Garcia v. INS, 204 F. 3d 985, 990 (9th Cir, 2000). An asylum applicant must demonstrate "persecution or a well-founded fear of persecution on account of [one of five grounds]: race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §1101(a)(42(A); Efe v. Ashcroft, 293 F.3d at 912. The asylum applicant bears the burden of establishing past persecution and a well-founded fear of future persecution based upon one of the five protected grounds of the Act. INS v. Elias-Zacarias, 502 U.S. 478,481, 112 S. Ct. 812 (1992).

Persecution is defined as "the infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive." Kataria v. INS, 232 F.3d at 1119, citing Cordon-Garcia. 204 F. 3d at 991 (quoting Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998).

To establish a well-founded fear of persecution, an applicant must demonstrate both a subjective and an objective fear of persecution. Kataria v. INS, 232 F.3d at 1119, citing Mejia-Paz v. INS, 111 F.3d 720, 723 (9th Cir. 1997). An applicant can satisfy the subjective component by credibly testifying that he genuinely fears persecution. An applicant can satisfy the objective component in two ways. Kataria v. INS, 232 F.3d at 1119, citing Ladha v. INS, 215 F.3d 889, 897 (9th Cir. 2000). The first way is to prove

persecution in the past, giving rise to a rebuttable presumption of a well-founded fear of future persecution. Citing 8 C.F.R. § 208.13(b)(1)(i) (2000). The second way is to "show a good reason to fear future persecution by adducing credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution." Kataria v. INS, 232 F.3d at 1119, citing Ladha v. INS, 215 F. 3d at 897 (quoting Duarte de Guinac v. INS, 179 F.3d 1156, 1159 (9th Cir. 1999). The objective requirement can be met "either through the production of specific documentary evidence or by credible and persuasive testimony. Id.

Establishing Eligibility for Withholding of Removal Under the Statute

An alien is entitled to withholding of removal "if the evidence demonstrates a clear probability that the applicant would be persecuted were he to be deported to his home country." Kataria v. INS, 232 F.3d at 1120, citing Duarte de Guinac v. INS, 179 F.3d at 1159. "In order to demonstrate a clear probability of persecution, a petitioner must prove that "it is more likely than not that he would be persecuted on account of a statutorily-protected ground." Kataria v. INS, 232 F.3d at 1120, Citing Navas v. INS, 217 F.3d 646, 655 (9th Cir. 2000). An alien seeking withholding of removal to any country must show that his life or freedom would be threatened in that country on account of one of the enumerated grounds. Kataria v. INS, 232 F.3d at 1120. Citing 8 U.S.C. § 1231 (b)(3) (Supp. II 1996).

Withholding of Removal Under the Convention Against Torture

Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits it signatory states from removing "a person to another state where there are substantial grounds

for believing that he would be in danger of being subjected to torture." The United States is a signatory to the Convention and therefore, pursuant to 8 C.F.R. Sec. 208.16(c)(2), an applicant for relief under the Convention against Torture may not be removed to the stated country if the applicant can establish that it is more likely than not that he would be tortured if he were to be removed to that country.

The 11th Circuit's Application of The Substantial Evidence Standard to Petitioner's Case

Other Cases

The Eleventh Circuit said in Forgue v. U.S. Atty. Gen, 401 F.3d 1282, 1886 (11th Cir. 2005):

> We review the IJ's factual determinations under the substantial evidence test. D-Muhumed v. United States Att'y Gen., 388 F.3d 814, 817-18 (11th Cir.2004); Al Najjar v. Ashcroft, 257 F.3d 1262, 1283-84 (11th Cir.2001). Under this highly deferential test, we "affirm the [IJ's] decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." Al Najjar, 257 F.3d at 1284 (internal quotation marks and citations omitted). "Thus, we do not engage in a de novo review of factual findings by the [IJ]. Similarly, we cannot find, or consider, facts not raised in the administrative forum, nor can we reweigh the evidence from scratch." Adefemi v. Ashcroft, 386 F.3d 1022, 1027 (11th Cir.2004) (en banc), petition for cert. filed, (U.S. Oct. 28, 2004) (No. 04-7944) (internal quotation marks and citations omitted). Furthermore, "[u]nder the substantial evidence test, we review the record evidence in the light most favorable to the agency's

decision and draw all reasonable inferences in favor of that decision." Id.

In Iao v. Gonzales, 400 F.3d 530 (7th Cir. 2005), the Seventh Circuit Court of Appeals correctly applied the Substantial Evidence Standard and found that since the Immigration Judge's decision could not be regarded as reasoned, and since there was not an opinion by the Board of Immigration Appeals, the IJ's decision was vacated and the case remanded.

In Iao v. Gonzales, 400 F.3d at 532, the Court stated:

> The immigration judge gave five reasons for nevertheless denying Li's application for asylum. The first is that she was not persecuted in China. But she does not claim to have been; it is a nonissue. The fifth reason is that her brother, who lives in the United States, is a follower of Falun Gong yet failed to submit an affidavit attesting that his sister is too. The judge misread the record; the brother is *not* a follower of Falun Gong. Reasons 2 through 4 overlap. Reason 2 is that Li failed to present persuasive evidence that she is a follower of the movement, because in her testimony she was "quite vague concerning her beliefs." For example, she didn't know that Falun Gong has a symbol (the "Falun Wheel" composed of reverse swastikas, a Buddhist symbol). But the heart of Falun Gong observance is the exercises, which she testified without contradiction that she does. *Reason 3 was that there were inconsistencies in her testimony about the visits of the police to her home. This was not, as the immigration judge thought, an independent reason for denying the application for asylum; rather, it was a reason not to credit her testimony about being a member of Falun Gong. The*

inconsistencies were trivial, however, and may well have been due to the fact that Li was testifying through an interpreter who appears not to have had a good command of English. When Li testified about the delivery of the summons to her home by the police, the immigration judge asked her whether she had had any prior "confrontations" with the government and she said no, but later explained that although the police didn't start coming to her home until they served the summons, village officials had visited earlier. Were these "confrontations"? She was never at home when they visited. And goodness knows how the interpreter translated "confrontations" into Chinese.
Reason 4 was that when interviewed by an asylum officer at the time she first applied for asylum, Li testified that after the village officials got wind of her involvement with Falun Gong she "went into hiding at different locations and never went back home." The immigration judge said that she "did not specifically testify in this manner (e.g. that she went into hiding) nor does the rest of the record support this statement." That is not correct. Although Li (more precisely, the interpreter) did not use the word "hiding," she said she wasn't at home when the police visited and that sometimes she was "at my aunt that I mentioned at her house." Apparently the village officials and police visited her home repeatedly, and since she was never there when they showed up it is a logical inference, supported also by her mother's letter, that she was indeed trying to evade the authorities. (Emphasis added).

The immigration judge's opinion cannot be regarded as reasoned; and there was no opinion by the Board of Immigration Appeals. So we have to vacate the decision and send the matter back to the